

is, that the money raised upon the notes was received by Schley, and was used by him, and I have not been able, in the face of the answers, to find any testimony of an agreement to withhold this instrument from the public record. And the fact, that it was enrolled by Griffith, without the consent of Schley, is cogent evidence, not only against any such agreement, but any acquiescence on his part in the request of Schley, that it should not be so enrolled. For these reasons thus briefly stated, I am of opinion, that the plaintiffs have not been successful in impeaching that deed.

But, in my opinion, the bill of sale is liable to very different considerations.

It has been renewed, as we have seen, from the 22d of March, 1845, to the 4th of June, 1846, and no new consideration moved from Griffith after the 4th of September, 1845. Every new instrument executed subsequently, and there were no less than thirteen, have been neither more nor less than simple renewals of that deed, and this contrivance has been resorted to, for the avowed purpose of keeping from the citizens of Baltimore, a knowledge of the fact, that Mr. Schley's "household goods were mortgaged." It was, as the defendant Griffith declares, to gratify Schley, in the very natural desire of avoiding the mortification of discovering to the society in which he moved, his temporary embarrassments. It is true, the defendant also says, he had not the most distant cause for suspecting, that the retaining of said papers in his possession, was desired by Schley, for the purpose of advancing any pecuniary speculations, or sustaining unduly his credit, and he expressly denies any agreement with Schley upon the subject, but he does admit, that he did withhold the instrument from the record, to gratify Schley in his desire to keep his fellow citizens in the dark in regard to his situation, and that he continued to act in accordance with this expressed desire, until he was led to believe, that his security required him to pursue a different course.

Independently of authority, nothing strikes the mind with more force, than that if one of two innocent persons must suffer,